

**IN THE INCOME TAX APPELLATE TRIBUNAL "G"
BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN, AM &
SHRI RAVISH SOOD, JM**

आयकरअपीलसं./ I.T.A. No. 5172 & 5173/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2010-11 & 2011-12)

M/s Status Trading Corporation Dulani & Co. 318, J. K. Chamber Premises CSL, Section-17, Vashi, Navi Mumbai-400 703	बनाम/ Vs.	DCIT 25(1)(2), Room no. 403, 4 th floor, C-10, Pratyakshkar Bhavan, Bandra(E), Mumbai 400 050
स्थायीलेखासं./जी आइ आरसं./PAN No. AAASF3198R		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Rajani Ram & Shri Prakash K. Jotwani, ARs
प्रत्यर्थीकीओरसे/Respondentby	:	Shri V. Vinod Kumar, DR

सुनवाईकीतारीख/ Date of Hearing	:	27.11.2019
घोषणाकीतारीख / Date of Pronouncement	:	22.01.2020

आदेश / ORDER

PER S. RIFAUR RAHMAN (ACCOUNTANTMEMBER):

The present two (2) Appeals have been filed by the assessee against the order of Commissioner of Income Tax (Appeals)-37, Mumbai, in short 'Ld. CIT(A)' dated 28.06.2018 for AY 2010-11 & 2011-12 respectively.

2. Since the issues raised in both the appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed of by this consolidated order. Firstly, we are taking ITA No. 5172/Mum/2018 for AY 2010-11 filed by the assessee.

3. The brief facts of the case are, assessee filed its return of income declaring income of Rs. 28,070/-. The Assessing officer received information from the office of DGIT(Inv), Mumbai forwarded through DGIT(Inv.). In the light of the above information and after recording reasons, notice under section 148 of the Act was issued and served on the assessee. The assessing officer completed the assessment as the assessee failed to prove

the genuineness of the purchases by submitting evidences as called for by the assessing officer. According to the assessing officer, assessee has intentionally inflated the purchases to reduce the taxable income, accordingly in order to give benefit of doubt to the assessee he estimated the addition on non-genuine purchases as the income of the assessee. The assessing officer initiated the penalty proceedings under section 271(1)(c) of the Act, on non-satisfaction of the submission of the assessee, assessing officer levied the minimum penalty of Rs. 30,084/-. According to assessing officer, assessee has not discharged the onus of proof on genuineness of purchase made from the alleged hawala dealers which has been disallowed in the assessment order.

4. Aggrieved with the above, assessee preferred an appeal before Ld. CIT(A) and Ld. CIT(A) after considering the submissions of the assessee, confirmed the penalty levied by AO.

5. Aggrieved with order of Ld. CIT(A), assessee is in appeal before us raising following grounds of appeal:-

On the facts and in the circumstances of the case and in law:

1. The learned CIT(A) erred in holding that the appellant had failed to offer an explanation despite evidence filed before him .

2. The learned CIT(A) erred in confirming levy of penalty of Rs. 30,084 /- being levied by AO by making ad hock addition of Rs.97,363/- being 12.5% of genuine purchases of Rs.7,78, 904/-by treating the same as bogus purchases , based on third party information, treating particulars of said purchases as not to his satisfaction , disregarding the evidences filed before him .

3. The appellant craves leave to add to, alter or amend the grounds of appeal at or before the hearing of the appellant.

6. Before us learned AR brought to our notice facts of the case and submitted that assessing officer has accepted the trading activities of the assessee that assessee purchases and sales simultaneously and he doubted only purchases and sales was never questioned. He submitted that assessing officer relied on third party information and the income was estimated by the

assessing officer at the time of assessment and he submitted that on estimation, penalty cannot be imposed, in this regard he relied on coordinate bench decision of ITAT in ITA number 496/Mumbai/2018 in Elcon Pipe and Fittings Pvt. Ltd. and ITA No. 2998/Mumbai/2017.

7. On the other hand, Ld DR relied on the order passed by Ld. CIT(A).

8. Considered the rival submissions and material placed on record. We notice that assessing officer estimated the income of the assessee by rejecting the documents submitted by the assessee in support of the purchases and in order to give benefit of doubt to the assessee, the AO estimated the addition at 12.5% of the purchases. We notice that the courts have held in the catena of cases, the penalty cannot be levied on estimation of income. Therefore, in our considered view assessing officer cannot levy penalty on estimation of income as in the present case. Accordingly, we are deleting the penalty levied by the assessing officer and the grounds raised by the assessee are **allowed.**

9. The other appeal of assessee in ITA number 5173/Mumbai/2018, the facts in this appeal are similar to the facts in ITA number 5172/Mumbai/2018, therefore, the grounds raised in this appeal are also **allowed**.

10. In the net result, both the appeals filed by the assessee are **allowed**.

Order pronounced in the open court on 22nd Jan 2020.

<i>Sd/-</i> (Ravish Sood) न्यायिकसदस्य / Judicial Member मुंबई Mumbai;दिनांकDated : Sr.PS. Dhananjay	<i>Sd/-</i> (S. Rifaur Rahman) लेखासदस्य / Accountant Member 22.01.2020
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File
आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai